

Patricia P. Hollenbeck (SBN 121765)
Rebecca G. Church (SBN 259652)
DUANE MORRIS LLP
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: (619) 744-2200
Facsimile: (619) 744-2201
E-mail: phollenbeck@duanemorris.com
rchurch@duanemorris.com

David E. Jones (*admitted pro hac vice*)
LOGAN & LOWRY, LLP

LOGAN & LOWKI, LLP
102 East Third Street

102 East Third Street
P.O. Box 452469

P.O. Box 432409
Grove, Oklahoma

Grove, Oklahoma 74343
Telephone: (918) 786-7

Telephone: (918) 786-7311
Facsimile: (918) 786-5687

Fax: (318) 788-3087
E-mail: diones@loganlo.com

E-mail: ajones@logallowy.com

Attorneys for JOHN ELMBURG, ROBERT

ATTORNEYS FOR JOHN ELMBURG, ROBERT ELMBURG, ERIC ELMBURG, ROCKY

FLICK, CREST

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL MONTGOMERY,

Plaintiff.

V.

WAL-MART STORES, INC.;
KINDERHOOK INDUSTRIES II, L.P.;
KINDERHOOK INDUSTRIES, L.L.C.;
KINDERHOOK CAPITAL FUND II, L.P.;
CRESTWOOD HOLDINGS, INC.;
BERGAN, L.L.C.; JOHN ELMBURG;
ROBERT ELMBURG; ERIC ELMBURG;
ROCKY FLICK; HOME DEPOT U.S.A.,
INC.; DOES 1 through 20 inclusive.

Defendants

Case No.: 12CV3057 JLS (DHB)

**DECLARATION OF ERIC
ELMBURG, MANAGER OF
BERGAN, LLC IN SUPPORT
MOTION TO DISMISS FOR
LACK OF STANDING (12(B)(1))
AND FAILURE TO STATE A
CLAIM (12(B)(6))**

Date: April 11, 2013
Time: 1:30 p.m.
Ctrm: 3B
Judge: Hon. Janis L. Sammartino

1 I, Eric Elmburg, declare as follows:

2 1. The statements made in this declaration are based upon my personal
3 knowledge, except where states upon information and belief, and if called to testify
4 with regard to the same, I could do so competently.

5 2. Bergan, LLC, ("Bergan") is an Oklahoma limited liability company. I
6 am a manager of Bergan.

7 3. In 2002, the year of the Montgomery incident, I was a minority
8 stockholder of Blitz U.S.A., Inc., an Oklahoma corporation ("Blitz").

9 4. In 2002, Blitz sold pet products and automotive products, including
10 gasoline containers.

11 5. On October 1, 2006, Blitz spun off its pet division in a Type D tax –free
12 reorganization pursuant to I.R.C. § 368(a)(1)(D).

13 6. Following the spinoff, Blitz and Bergan were separate entities, each
14 owned by the parent company, Crestwood Holdings, Inc., an Oklahoma corporation
15 ("Crestwood Holdings").

16 7. On September 21, 2007, Crestwood Holdings sold 100% of the Blitz
17 stock to Blitz Acquisitions, a Delaware limited liability company, an entity completely
18 unrelated to Bergan and Crestwood Holdings.

19 8. Following Crestwood Holdings' sale of Blitz stock to Blitz Acquisitions,
20 Bergan and Blitz were not affiliated entities.

21 9. On November 6, 2011, Blitz and Blitz Acquisitions filed for bankruptcy
22 protection under Chapter 11 in the matter styled: *In re: Blitz U.S.A., Inc. et al.*,
23 United States Bankruptcy Court for the District of Delaware, Case No. 11-13603-
24 PJW. Such bankruptcy action is currently pending.

25 I declare under penalty of perjury that the foregoing is true and correct, except
26 for those matters stated on information and belief and as to those, I believe them to be
27 true.

1 Executed on this 5th day of March, 2013 at Monkey Island, Oklahoma.
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ABW
Eric Elmburg, manager of Bergan, LLC